IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8566 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DISTRICT PANCHAYAT JAMNAGAR
Versus
D.D.BHATT EX.SENIOR CLERK AND ANOTHER

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Appearance :
MS SEJAL K MANDAVIA for the Petitioner
MS MEGHA JANI for Respondent No. 1.
MR DA DESAI, AGP for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 26/08/2005

ORAL JUDGMENT

By filing this petition, the petitioner–Panchayat has challenged the judgment and order passed by the Gujarat Civil Services Tribunal in Appeal No.26 of 2002. By the aforesaid order, the tribunal had allowed the Appeal filed by the present respondent and passed order of reinstatement by interfering with the punishment order. The tribunal set aside the order of removal passed against the petitioner by the department and substituted the said penalty by withholding of 4 increments with future effect with effect from 01.08.2002. The tribunal accordingly partly allowed the said appeal by judgment and order dated 9th April 2003. It is the aforesaid order, which is impugned in this petition at the instance of the District Panchayat, respondent herein.

The petitioner was serving as a Store Keeper

in the District Panchayat. He was subjected to Departmental Inquiry on the ground that he had committed certain illegalities in the matter of purchasing certain spare parts, making some changes in work order/supply order as well as not purchasing spare parts from the authorized dealer and other such charges. After the conclusion of the inquiry, he was removed from service. The petitioner, thereafter, challenged the said order by way of this petition, which is in the nature of under Article 227 of the Constitution of India. The tribunal came to the conclusion that though the misconduct is proved, the penalty inflicted on the petitioner is on higher side as it is the case of mere negligence. The tribunal, accordingly, interfered with the order of penalty and passed the aforesaid order.

At the time of hearing of this petition, it is submitted by both the sides that this Court may modify the order of the tribunal by enhancing

the penalty of withholding of 4 increments with future effect to withholding of 5 increments with future effect.

Learned advocate Ms.Mandavia for the petitioner submitted that she has taken instruction from the District Development Officer and accordingly she suggested that the penalty may be enhanced accordingly as the petitioner shall not be paid back wages for the intervening period.

Ms.Jani for the respondent submitted that she has no objection if the penalty is accordingly enhanced from withholding of 4 increments with future effect to withholding of 5 increments with future effect. She submitted that however from the date of order of the tribunal, the respondent is entitled to get his regular salary.

Considering the facts and circumstances of

the case, the order of the tribunal is modified to the extent that the respondent shall be subjected to withholding of 5 increments with future effect instead of 4 increments with future effect. Respondent shall be entitled to get regular salary from the date of the award of the tribunal. As per this order, the respondent is required to be reinstated in service and he will not be entitled to get benefit of back wages for the interim period. However, he shall be entitled to regular salary from the date of the order of the tribunal and he will be entitled to continuity of service for the purpose of seniority and other such benefits except benefit of back wages for the interim period.

In my view, since there is a consensus prevailing between the parties, petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

It is clarified that respondent shall be entitled to get the benefit of continuity of service for all other purposes such as seniority, periodical increments etc. and all other ancillary benefits.

(P.B.MAJMUDAR, J.)

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